

## Message Text

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INFO OCT-01 ISO-00 SP-03 AID-20 EB-11 NSC-07 RSC-01

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TO SECSTATE WASHDC 8420

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C O R R E C T E D C O P Y - OMISSION IN PARA EIGHTE.O. 11652: N/A

TAGS: EINV, HA

SUBJECT: LEGAL AND FACTUAL BACKGROUND TO DISPUTE BETWEEN DUPONT  
CARIBBEAN AND GOH

REF: STATE 173855

1. SUMMARY: FROM CONVERSATIONS WITH HAITIAN LAWYERS AND FROM STUDY OF DOCUMENTS AVAILABLE AS OF AUGUST 16 (WHICH DO NOT INCLUDE ADDITIONAL MATERIAL FROM GOH OR PIERSON'S RECENT PRESENTATION TO DEPARTMENT), EMBASSY CONCLUDES THAT PROCESS BY WHICH DCI'S CONTRACT WAS REVOKED WAS IN ACCORDANCE WITH HAITIAN LAW AND WITH NORMAL PROCEDURES FOR COURT ACTIONS IN HAITI. ACTUAL FACTS ARE MORE DIFFICULT TO DETERMINE IN VIEW OF CHARGES, COUNTER CHARGES, AND LACK OF DOCUMENTARY EVIDENCE. HOWEVER, PIERSON DID NOT SUCCEED IN REFUTING ALL THE GOVERNMENT'S CHARGES IN COURT, AND THERE ARE SOME INDICATIONS THAT HE IS UNABLE TO REFUTE THE CHARGES. END SUMMARY.

2. TIME SCHEDULE OF HAITIAN LEGAL PROCEEDINGS: COURT PROCEEDINGS INVOLVED: (A) COURT HEARING MARCH 1, 1973 ON REQUEST BY GOH FOR TEMPORARY RESTRAINING ORDER WITH DECISION RENDERED MARCH 9, 1973; (B) CIVIL COURT HEARING OF CASE ON JUNE 25 AND JULY 9, 1973, WITH LIMITED OFFICIAL USE

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DECISION RENDERED AUGUST 27, 1973; (C) APPEALS COURT HEARING,

WITH JUDGMENT ISSUED JAN. 30, 1974; AND (D) SUPREME COURT HEARING, JUDGMENT ISSUED JUNE 26, 1974. THIS EXHAUSTS LEGAL PROCEEDINGS IN HAITI.

3. RESTRAINING ORDER: ON MARCH 1, 1973 GOH APPLIED TO COURTS FOR ISSUANCE OF TEMPORARY INJUNCTION WHICH WOULD REQUIRE DCI TO STOP ALL WORK ON ILE DE LA TORTUE. THIS ACTION DID NOT CANCEL THE CONTRACT; GOH ASKED ONLY THAT TEMPORARY RESTRAINING ORDER BE PLACED ON DCI'S ACTIVITIES UNTIL CASE COULD BE DECIDED, CLAIMING THAT INTERESTS OF COMMUNITY WOULD BE ENDANGERED IF STEPS WERE NOT TAKEN IMMEDIATELY. SUCH ORDERS CAN BE ISSUED BY A SPECIAL HAITIAN COURT IF COMPLAINANT CAN SHOW HE HAS SOME REASON FOR A CASE AND THAT IMMEDIATE ACTION IS NECESSARY TO PRESERVE THE RIGHTS OF COMPLAINANT. IN ALL SUCH INSTANCES, THE CASE MUST THEN FOLLOW NORMAL CHANNELS AND BE DECIDED ON ITS MERITS. ADMITTEDLY, PIERSON WAS GIVEN VERY LITTLE WARNING BEFORE THIS ACTION (REPORTEDLY, ONLY 24 HOURS NOTICE). HOWEVER, FOR ATLEAST THREE MONTHS THE EMBASSY HAD BEEN AWARE THAT THE GOH WAS NOT HAPPY WITH DCI AND ITS IS DIFFICULT TO BELIEVE THAT PIERSON WAS NOT AWARE OF THE TROUBLE (HE STATED HE WAS ILL), HE WAS REPRESENTED BY A LAWYER. FURTHERMORE, THE COURT DID NOT ISSUE ITS DECISION UNTIL IT HAD RECEIVED AND STUDIED WRITTEN COMMENTS FROM PIERSON.

4. CIVIL COURT PROCEEDINGS: ACCORDING TO HAITIAN COURT RECORDS (CONFIRMED AT THE TIME BY THE EMBASSY), PIERSON WHO WAS THEN STAYING AT THE CASTEL HAITI WAS PROPERLY SERVED ON APRIL 11, 1973 WITH A SUMMONS AND NOTICE OF THE FORTHCOMING CASE IN THE CIVIL COURT. HE FOUND A LAWYER, GERARD MERCERON, WHO WAS ALSO PROPERLY IDENTIFIED TO THE COURT BY A DOCUMENT OF MAY 10. DURING THE CIVIL COURT HEARINGS, WHICH TOOK PLACE JUNE 25 AND JULY 9, PIERSON'S LAWYER WAS GIVEN AN OPPORTUNITY TO ARGUE THE CASE AND TO PRESENT DOCUMENTS. (HAITIAN LAW PROVIDES THAT IN CIVIL CASES INVOLVING OVER \$3.00 THE COURT RECEIVES DOCUMENTARY EVIDENCE AND HEARS PLEADINGS FROM THE LAWYERS, BUT DOES NOT CALL WITNESSES. THE OPPOSING LAWYERS ARE EXPECTED TO PROVIDE EACH OTHER WITH COPIES OF THE DOCUMENTS THEY PLAN TO SUBMIT TO THE COURT.) PIERSON'S LAWYER SUBMITTED DOCUMENTS ON BEHALF OF PIERSON AND THEY ARE LISTED IN THE COURT RECORD.

5. EVIDENCE SUBMITTED TO CIVIL COURT. IN REVIEWING THE CASE FROM LIMITED OFFICIAL USE

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THE WRITTEN RECORDS, THE PAUCITY AND POOR EVIDENTIAL QUALITY OF THE DOCUMENTS SUBMITTED BY PIERSON'S LAWYER IS STRIKING. COPIES OF TELEGRAMS AND OF DCI'S PROGRESS REPORTS WERE SUBMITTED--BUT THESE WOULD NOT APPEAR TO CONSTITUTE DOCUMENTARY EVIDENCE. NO COPY OF THE LAND-USE STUDY PREPARED BY AN OUTSIDE FIRM WAS SUBMITTED. THIS STUDY (A COPY OF WHICH IS AVAILABLE IN EMBASSY FILES) WOULD HAVE REFUTED ONE OF THE GOVERNMENT'S ACCUSATIONS. NOR WERE COPIES SUBMITTED OF ANY LETTERS PIERSON MIGHT HAVE WRITTEN WHICH COULD HAVE SUPPORTED

THE CLAIM THAT PIERSON HAD TRIED TO ESTABLISH A FREE PORT AUTHORITY. SUCH LETTERS, IF THEY EXIST, WOULD HAVE BEEN THE KEY POINT IN PIERSON'S DEFENSE. A HAITIAN LAWYER PRESENT AT THE HEARINGS CONFIRMED THAT THE PLEADING OF PIERSON'S LAWYER WAS INFERIOR TO THE ARGUMENTS PRESENTED BY THE GOVERNMENT. DCI'S LAWYER MADE NO RESPONSE TO ACCUSATIONS ON THE SHARES (SEE PARA 9) AND THE ONLY RESPONSE MADE TO ACCUSATION THAT DCI HAD FAILED TO ESTABLISH A FREE PORT AUTHORITY WAS AN UNSUPPORTED STATEMENT THAT PIERSON HAD TRIED TO CALL ORGANIZATIONAL MEETING BUT THAT THE HAITIAN NOMINEES TO THE BOARD "WERE TOO BUSY TO ATTEND."

6. APPEALS PROCEDURE: HERE DCI'S LAWYER MERCERON SLIPPED UP BADLY, BY NOT FOLLOWING THE PROPER FILING PROCEDURE. ALTHOUGH THE INTERESTS OF BOTH THE US AND HAITI COULD HAVE BEEN BETTER SERVED IF THE APPEALS COURT HAD RULED ON SUBSTANCE AS WELL AS FORM, THERE IS A SIZEABLE BODY OF JURISPRUDENCE IN HAITI COVERING DECISIONS, PARTICULARLY IN THE APPEALS COURT, MADE ON THE BASIS OF TECHNICALITIES.

7. SUPREME COURT PROCEDURE: HERE, TOO, THE GOH APPEARED TO HAVE FOLLOWED HAITIAN PROCEDURES. THE SUPREME COURT STUDIED THAT CASE AND, IN ACCORDANCE WITH ITS FUNCTIONS AND ON THE BASIS OF ARGUMENTS PROVIDED BY THE TWO SIDES, DETERMINED THAT THE LAW HAD BEEN PROPERLY APPLIED.

8. FACTS OF THE DISPUTE: BECAUSE OF THE CHARGES AND COUNTERCHARGES, IT IS DIFFICULT TO DETERMINE THE FACTS OF THE CASE. HOWEVER, PIERSON HAS NOT BEEN ABLE SO FAR TO REFUTE TO THE SATISFACTION OF THE EMBASSY HAITIAN GOVERNMENT CHARGES THAT HE FAILED TO FULFILL CONTRACT TERMS WITH RESPECT TO ISSUANCE OF SHARES AND THE ESTABLISHMENT OF THE FREE PORT AUTHORITY

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9. SHARES: IN ACCORDANCE WITH THE CONTRACT, PIERSON RETAINED 10 PERCENT OF CAPITAL STOCK IN CLASS B VOTING SHARES, 80 PERCENT IN CLASS A (NON-VOTING) SHARES WERE TO BE SOLD ON THE INTERNATIONAL MARKET TO PROVIDE INVESTMENT FUNDS, AND 10 PERCENT (ALSO CLASS A, NON-VOTING SHARES) WERE TO GIVEN TO THE GOH. THE GOH CLAIMED THAT PIERSON HAD SOLD NO SHARES ON THE MARKET AND, IN ADDITION, HAD ISSUED SHARES IN VIOLATION OF THE CONTRACT TO AN INDIVIDUAL AS COMPENSATION FOR SERVICES. NOTHING IN THE EMBASSY FILES OR IN THE DCI COURT PRESENTATION REFUTES THE GOH CLAIM. NOR WAS PIERSON ABLE TO REFUTE THE CLAIM OF THE GOH THAT IT HAD NOT BEEN GIVEN THE OPTION (PROVIDED FOR IN THE CONTRACT) OF TAKING THE 18-MONTH PAYMENT IN THE FORM OF PROFITS ON ITS SHARES RATHER THAN BY A LUMP-SUM PAYMENT OF \$25,000.

10. EFFORTS TO ESTABLISH FREE PORT AUTHORITY: THE FREE PORT AUTHORITY CALLED FOR IN THE ORIGINAL CONTRACT NEVER FUNCTIONED. PIERSON SUBMITTED NOT DOCUMENTARY EVIDENCE (OTHER THAT DCI PROGRESS REPORTS) TO SUPPORT THIS STATEMENT THAT HAD DONE EVERYTHING IN HIS POWER TO ESTABLISH SUCH AN AUTHORITY. EMBASSY HAS RECORDS OF TWO EFFORTS BY PIERSON TO CALL MEETINGS OF BOARD OF FREEPORT AUTHORITY. FIRST EFFORT IS DEMONSTRATED BY: (1) LETTER FROM PIERSON TO THE PRESIDENT DATED AUGUST 11, 1972 GIVING THE NAMES OF DCI'S NOMINEES TO THE BOARD AND REQUESTING THE NAMES OF THE GOH  
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REPRESENTATIVES; (2) A LETTER FROM THE PRESIDENT TO PIERSON DATED AUGUST 28, 1972, NAMING HAITIAN REPRESENTATIVES; AND (3) A LETTER FROM PIERSON TO CAMBRONNE DATED SEPTEMBER 1, 1972, AGAIN NAMING THE DCI REPRESENTATIVES. BOARD MEETING (ONLY ONE OF WHICH EMBASSY IS COGNIZANT) WAS THEN HELD ON SEPT. 9, 1972. PIERSON MADE ONE OTHER ATTEMPT, SENDING OUT TELEGRAMS APRIL 4, 1973, CALLING FOR A MEETING ON APRIL 12. HOWEVER IT WAS THEN TOO LATE; THE CIVIL COURT HAD ALREADY ISSUED ITS TEMPORARY RESTRAINING ORDER (MARCH 9, 1973) AND BEFORE PROPOSED DATE OF MEETING PIERSON HAD BEEN SERVED WITH NOTICE OF PROSPECTIVE COURT CASE.

11. EXTENT OF PIERSON'S RESPONSIBILITY FOR FAILURE TO ESTABLISH FREE PORT AUTHORITY: IN THE 22 MONTHS FROM PUBLICATION OF THE CONTRACT UNTIL THE FIRST COURT HEARING, NO LEGAL OR PHYSICAL STEPS WERE TAKEN TO CREATE EVEN A SEMBLANCE OF A FREE PORT AUTHORITY. THERE WAS NO OFFICE, NO EMPLOYEES, NO BY-LAWS, NOR ANY EFFORT TO ESTABLISH A JURIDICAL PRESENCE OF AN AUTHORITY IN HAITI. IN

DETERMINING RESPONSIBILITY FOR THIS LACK, FOLLOWING FACTORS SHOULD BE TAKEN INTO CONSIDERATION:

(A) THE CONTRACT PROVIDED THAT PIERSON WAS TO BE PRESIDENT OF THE FREE PORT AUTHORITY BOARD AND THAT DCI WAS TO NAME TWO ADDITIONAL BOARD MEMBERS, GIVING PIERSON CONTROL OF THREE OF THE FIVE SEATS. THIS WOULD CERTAINLY INDICATE THAT PIERSON, BOTH AS THE INVESTOR AND AS CONTROLLING FORCE ON BOARD HAD CHIEF RESPONSIBILITY. HE EVIDENTLY DID TAKE SOME ACTIONS IN HIS CAPACITY AS PRESIDENT OF THE BOARD, BUT NONE WHICH WOULD LEAD TO THE ESTABLISHMENT OF THE AUTHORITY.

(B) OTHER MATERIAL IN THE EMBASSY FILES INDICATES THAT FROM SEPTEMBER 1972 THROUGH JANUARY 1973 TRANSLINEAR AND DCI WERE FIGHTING OVER WHO WAS TO BE NAMED TO ONE OF THE THREE DCI SEATS ON THE BOARD. UNDER THE CIRCUMSTANCES IT'S HARD TO SEE HOW DCI COULD HAVE TAKEN ANY EFFECTIVE ACTION TO DETERMINE HAITIAN NOMINEES OR TO CALL A BOARD MEETING.

(C) IT MIGHT ALSO BE NOTED THAT DURING THE 22 MONTHS THE CONTRACT WAS IN EXISTENCE DCI NEVER ESTABLISHED A HAITIAN IDENTITY, AND APPARENTLY DID BUSINESS IN HAITI EITHER FROM TEXAS OR FROM HOTEL ROOMS. IN MARCH 1972 DCI WAS ADVISED BY BOTH OPIC LIMITED OFFICIAL USE

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AND THE EMBASSY TO FORM A HAITIAN SUBSIDIARY TO EXECUTE THE TORTUGA PROJECT. AT THE TIME THE DCI REP STATED SUCH ACTION HADN'T BEEN TAKEN "BECAUSE WE HAVE NOT GOTTEN AROUND TO IT." IN EMBASSY VIEW FAILURE TO CREATE AN ORGANIZATION IN HAITI, TO CONSULT WITH GOH, AND TO FOLLOW UP ON CREATION OF FREE PORT AUTHORITY SHOWS SERIOUS DEFICIENCY AND RAISES QUESTIONS AS TO DCI'S SERIOUSNESS AND CAPABILITIES.

12. FURTHER ACTION: EMBASSY PREPARING TWO ADDITIONAL TELEGRAMS, ONE CONTAINING QUESTIONS WHICH MIGHT BE POSED TO PIERSON DURING AUGUST 21 MEETING AND ANOTHER PROVIDING ADDITIONAL BACKGROUND MATERIAL. IF DEPARTMENT LAWYERS REQUIRE ADDITIONAL CLARIFICATION RE HAITIAN LEGAL SYSTEM OR WOULD LIKE FURTHER RESEARCH UNDERTAKEN HERE, PLEASE ADVISE.

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## Message Attributes

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